IN THE

Supreme Court of the United States

October Term, 1973

No.....

THELMA B. STANTON,
Appellant,

v.

JAMES LAWRENCE STANTON, JR.,
Appellee.

On Appeal from the Supreme Court of the State of Utah

JURISDICTIONAL STATEMENT

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IN THE

Supreme Court of the United States

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No.....

THELMA B. STANTON,
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v.

JAMES LAWRENCE STANTON, JR.,
Appellee.

On Appeal from the Supreme Court of the State of Utah

JURISDICTIONAL STATEMENT

OPINION BELOW

The opinion of the Supreme Court of the State of Utah is reported at 517 P.2d 1010 (1974) and is set forth in the appendix, infra, pages 5a through 11a. It has not been published in the official Utah Reports.

JURISDICTION

Jurisdiction of this court is invoked pursuant to 28 U.S.C. §1257(2), this being an appeal which draws into question the validity of 15-2-1 Utah Code Annotated 1953 infra, page 3, on the ground that it is repugnant to the Constitution of the United States. Jurisdiction of this court is sustained by *Charleston Federal Savings and Loan Association v. Alderson*, 324 U.S. 182 (1946); and *Cohen v. California*, 403 U.S. 15 (1971).

Appellant sought a judgment for past-due support money for her daughter, which had accrued pursuant to a divorce decree. The judgment was refused by the trial court in an order dated June 13, 1973, on the ground that under 15-2-1 Utah Code Annotated 1953, the daughter attained her majority when she became 18 years of age, and that the obligation of the appellee to pay support money for her ended.

On appeal to the Utah Supreme Court, the order denying judgment was affirmed on January 4, 1974, and a timely petition for rehearing was denied on January 30, 1974. A timely notice of appeal to this court was filed in the District Court of Salt Lake County, State of Utah, on March 5, 1974, infra p. 12a.

The Supreme Court of the State of Utah explicitly rejected appellant's Fourteenth Amendment challenge to 15-2-1 Utah Code Annotated 1953, and this matter is therefore appropriately brought to this court by appeal.

In the event that the court does not consider appeal the proper mode of review, appellant requests that the

papers whereupon this appeal is taken be regarded and acted upon as a petition for writ of certiorari pursuant to 28 U.S.C. §2103.

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

This case involves the Fourteenth Amendment to the Constitution of the United States.

Also involved is 15-2-1 Utah Code Annotated 1953 (Utah Code Replacement Volume 2A, page 475) which provides:

> The period of minority extends in males to the age of 21 years and in females to that of 18 years; but all minors obtain their majority by marriage.

QUESTION PRESENTED

Whether fixing a different period of minority for males than for females violates the due process and equal protection clauses of the Fourteenth Amendment.

STATEMENT

Appellant and appellee were once husband and wife. On November 29, 1960, a decree of divorce was entered which contained the following provision:

> Defendant [appellee] is ordered to pay to plaintiff [appellant] the sum of $300.00 per month as child support and alimony, $100.00 per month for each child as child support and

> $100.00 per month as alimony, to be paid on or before the first day of each month through the office of the Salt Lake County Clerk.

The parties have two children, a daughter born February 12, 1953, and a son born January 29, 1955. The daughter became 18 years of age on February 22, 1971, whereupon appellee ceased making payments for her support.

On May 22, 1973, appellant filed a motion for entry of judgment against appellee in the amount of $3,000.00, including $2,700.00 for the support of her daughter, which sum had accrued after she became 18 years of age.

After argument of the motion, the trial court on June 13, 1973, entered findings of fact, conclusions of law, and an order denying appellant's motion. The order is set forth infra, p. 1a.

(The order also related to other matters, including support money due for the parties' son, and payment of medical bills and attorney's fees. These matters, however, are not involved in this appeal.)

HOW THE FEDERAL QUESTIONS WERE RAISED AND DECIDED BELOW

Appellant's Motion for Judgment was argued orally, without written briefs. Appellant contended that if 15-2-1 Utah Code Annotated 1953 were applied in such a manner as to deprive her of support money for an 18 year old daughter, but to permit other parties similarly situated to obtain support for 18 year old sons,

the statute was invalid because in violation of the due process and equal protection clauses of the Fourteenth Amendment of the Constitution of the United States.

The trial court resolved the question in Conclusion No. 1 of its Amended Findings of Fact and Conclusions of Law entered on June 13, 1973, wherein it stated:

> On February 12, 1971, Sherri Lyn Stanton, one of the children of the parties, became 18 years of age, and under the provisions of 15-2-1 Utah Code Annotated 1953, thereby attained her majority. Defendant is not obligated to plaintiff for maintenance and support of Sherri Lyn Stanton since that date.

On the same date the court entered its order denying appellant's motion for judgment.

Appellant appealed the order to the Utah Supreme Court and again raised the federal constitutional question. Point II of appellant's brief to that court stated:

> As applied by the trial court, 15-2-1 Utah Code Annotated 1953 violates Amendment Fourteen, United States Constitution, and Article I, Section 7 and 24, Utah Constitution.

Under this Point II, the appellant urged the following:

> The United States Supreme Court and the Courts of Appeal recently have had occasion to consider the equal protection and due process clauses in relation to statutory classifications based on sex.

After citing *Reed* v. *Reed*, 404 U.S. 71 (1971), *Frontiero* v. *Richardson*, 411 U.S. 677 (1973), and

decisions by United States Courts of Appeal, the brief said:

> We are unable to conceive any rational basis for the legislative discrimination between the sexes in 15-2-1 Utah Code Annotated 1953. The statute, first enacted prior to adoption of the Fourteenth Amendment, has a number of implications with respect to the contractual capacities of men and women, but the application with which we are concerned is the one which would deny support and maintenance to the mother of an 18 year old daughter while giving it to an otherwise identically situated mother of an 18 year old son.

The Utah Supreme Court unanimously and expressly rejected appellant's contention. After quoting the provisions of 15-2-1 Utah Code Annotated 1953, the court said:

> She contends that making the age of majority lower for women than for men is discriminatory, and denies equal protection of the laws.[1]
>
> " * * * in order to maintain and safeguard the balance of power so essential to our system of government, we think it is correct and desirable to adhere to a policy of caution and restraint in respect to the prerogatives of the legislature; and not strike down a statute unless it appears so clear that it is beyond a reasonable doubt that there is such irreconcilable conflict [with the constitution]. * * *
>
> * * * it is our judgment that there is no basis upon which we would be justified in concluding that the statute is so beyond a reasonable doubt in conflict with constitutional provisions that it should be stricken down as invalid * * * .

1. Utah Constitution, Article I, Section 7 and 24; and Article IV, Section 1; and also U.S. Constitution, Amendment Fourteen.

THE FEDERAL QUESTIONS ARE SUBSTANTIAL

As applied by the Utah Supreme Court, Utah's "age of majority" statute deprives one mother of the right to child support while giving it to others in identical circumstances—except for the sex of their children. But the right to support is not the only question. The decision affects males and females differently with respect to many rights and privileges, e.g., the right to contract (15-2-2 Utah Code Annotated 1953); the right to purchase alcoholic beverages (32-7-15 Utah Code Annotated 1953); exemption of earnings from execution (78-23-1[12] Utah Code Annotated 1953); and access to the courts (Rule 17[b], Utah Rules of Civil Procedure).

Moreover, the decision portends additional inroads of federal constitutional rights because of the holding that a statute will not be declared unconstitutional unless it is in conflict with constitutional provisions "beyond a reasonable doubt."

The Utah Supreme Court simply ignored the principle announced by this court in *Reed v. Reed*, 404 U.S. 71 (1971) and *Frontiero v. Richardson*, 411 U.S. 677 (1973).

In *Reed* this court had before it an Idaho probate statute providing that "males must be preferred to females", in issuance of letters of administration. The Idaho Supreme Court having held that the statutory preference given to males was mandatory, this court reversed on the ground that the distinction between men and women was an "invidious discrimination".

With respect to the equal protection clause, the court said:

> In applying that clause, this Court has consistently recognized that the Fourteenth Amendment does not deny to States the power to treat different classes of persons in different ways. * * * The Equal Protection Clause of that amendment does, however, deny to States the power to legislate that different treatment be accorded to persons placed by a statute into different classes on the basis of criteria wholly unrelated to the objective of that statute. A classification "must be reasonable, not arbitrary, and must rest upon some ground of difference having a fair and substantial relation to the object of the legislation, so that all persons similarly circumstanced will be treated alike." Royster Guano Co. v. Virginia, 253 U.S. 412 (1920). The question presented by this case, then, is whether a difference in the sex of competing applicants for letters of administration bears a rational relationship to state objective that is sought to be advanced by the operation of §§15-312 and 15-314.
>
> In upholding the latter section, the Idaho Supreme Court concluded that its objective was to eliminate one area of controversy when two or more persons, equally entitled under §15-312, seek letters of administration and thereby present the probate court "with the issue of which one should be named." The court also concluded that where such persons are not of the same sex, the elimination of females from consideration "is neither an illogical nor arbitrary method devised by the legislature to resolve an issue that would otherwise require a hearing as to the relative merits . . . of the two or more petitioning relatives . . . " 93 Idaho, at 514, 564 P.2d at 638.
>
> * * * The objective of §15-312 clearly is to establish degrees of entitlement of various classes

> of persons in accordance with their varying degrees and kinds of relationship to the intestate. Regardless of their sex, persons within any of the enumerated classes of that section are similarly situated with respect to that objective. By providing dissimilar treatment for men and women who are thus similarly situated, the challenged section violates the Equal Protection Clause. Royster Guano Co. v. Virginia, supra.

Subsequently, in *Frontiero* this court held unconstitutional a federal statutory provision under which a serviceman was allowed to claim his wife as a dependent without regard to whether she was in fact dependent upon him, while a servicewoman could not claim her husband as a dependent unless he was in fact dependent upon her for over one-half of his support.

Speaking for four members of the court, Mr. Justice Brennan said:

> Although the legislative history of these statutes sheds virtually no light on the purposes underlying the differential treatment accorded male and female members, a majority of the three judge District Court surmised that congress might reasonably have concluded that, since the husband in our society is generally the "breadwinner" in the family and the wife typically the "dependent" partner—"it would be more economical to require married female members claiming husbands to prove actual dependency than to extend the presumption of dependency to such members." 341 F.Supp., at 207. Indeed, given the fact that approximately 99% of all members of the uniformed services are male, the District Court speculated that such differential treatment might conceivably lead to a "considerable saving of administrative expense and manpower." *Ibid.*

> * * * We can only conclude that classifications based upon sex, like classifications based upon race, alienage, or national origin, are inherently suspect, and must therefore be subjected to strict judicial scrutiny. Applying the analysis mandated by that stricter standard of review, it is clear that the statutory scheme now before us is constitutionally invalid."

Four other members of the court concurred in the decision in *Frontiero*, three on the ground that under the decision in *Reed* the petitioner was not accorded due process of law, and one on the ground that the statutes worked an "invidious discrimination."

The Utah Supreme Court not only refused to expose the questioned statute to judicial scrutiny; it did not even pay lip service to the requirement that the classification must have a fair and substantial relation to the object of the legislation. The court made no attempt to distinguish *Reed* or *Frontiero;* indeed, although the two cases were the primary bases for the appeal, the Utah Supreme Court did not cite either of them. The court not only refused to strike down an unconstitutional classification, but ignored the supremacy clause of Article VI, Constitution of the United States, by applying a constitutional test of its own making.

In upholding the constitutionality of 15-2-1 Utah Code Annotated 1953, the Utah Supreme Court said:

> "In considering plaintiff's charge that the statute just quoted is unconstitutional there are some general principles to be applied. Due to the important concept of separation of powers in our government, the court should defer to the prerogatives of the legislature to make the laws, and confine their own actions to interpreting and

applying them. This, of course, does not negate their responsibility of determining an act to be invalid if there is a clear and irreconcilable conflict between it and the Constitution, which is the supreme and controlling law. But the courts are in a peculiar and somewhat delicate position because it falls to their lot to decide whether such conflict exists, and there is always the danger of trespassing upon the legislative domain. For this reason, and in order to maintain and safeguard the balance of power so essential to our system of government, we think it is correct and desirable to adhere to a policy of caution and restraint in respect for the action of the legislature; and not strike down a statute unless it appears so clear that it is beyond a reasonable doubt that there is such irreconcilable conflict.

* * *

There is no doubt that the questioned statute treats men and women differently. But there is likewise no question that it may treat people differently, based on classification, so long as there is a reasonable basis for the classification, which is related to the purposes of the act, and it applies equally and uniformly to all persons within the class. The plaintiff's argument is that, notwithstanding the foregoing, there is no sound reason for differentiation between the sexes as to the termination of the right of support. She asserts that whatever basis there may have been in former days for continuing the support of boys for the extra three years, because of the liberalization process in which women have become more involved in all affairs of the world outside the home, that basis no longer exists.

* * *

It may be that our ancestors for generations before us have been misguided in their belief that there are some fundamental differences between the sexes. But it is remarkable how some

> of those old notions do continue to prevail as to numerous interesting differences. Included among them is the belief held by many that generally it is the man's primary responsibility to provide a home and its essentials for the family, and that however many exceptions and whatever necessary improper variations therefrom may exist in differing circumstances, it is a salutary thing for him to get a good education and/or training before he undertakes those responsibilities.
>
> Perhaps more important than this, there is another widely accepted idea: that girls tend generally to mature physically, emotionally and mentally before boys and that they generally tend to marry earlier.
>
> * * *
>
> On the basis of what has been said above we make these observations: that there are various factors which should be considered in formulating the policy of the law as to when the duty to support children should terminate; that the opposing contention with respect to the merits of plaintiff's proposal are matters upon which reasonable minds might entertain different opinions; that due to those facts, combined with the long existence and application of this statute in harmony with our constitutional provisions, it is our judgment that there is no basis upon which we would be justified in concluding that the statute is so beyond a reasonable doubt in conflict with constitutional provisions that it should be stricken down as invalid.

Like the three judge district court in *Frontiero*, the Utah Supreme Court "surmised" what the Utah legislature might reasonably have concluded, there being no legislative history to shed light on the purpose underlying the differential treatment accorded to males and females.

The statute antedates Utah statehood and has not been modified since 1888; but subsequent legislation negates the Utah Supreme Court's surmises as to the legislature's ideas about males and females. The Utah Public Assistance Act provides for public assistance to "children under the age of 21" (55-15a-17 Utah Code Annotated 1953); the Utah Uniform Civil Liability for Support Act requires men and women to support their children, and defines child as "a son or daughter under the age of 21 years" (78-45-2 Utah Code Annotated 1953); the Utah Uniform Gift to Minors Act defines a minor as a person "who has not attained the age of 21 years" (75-15-2[11] Utah Code Annotated 1953); tobacco may not be sold to or purchased or possessed by minors of either sex under the age of 19 years (76-42-4 and 76-42-5 Utah Code Annotated 1953); motor vehicle operators licenses are issued to minors of either sex under the same circumstances (41-2-10 Utah Code Annotated 1953); and persons of either sex may vote upon reaching the age of 18 years (20-1-17 Utah Code Annotated 1953).

The decision of the Utah Supreme Court is in conflict with decisions of the United States Courts of Appeal relating to the constitutionality of classifications based on sex. See *Moritz v. Commissioner of Internal Revenue*, 469 F.2d 466 (10 Cir. 1972), which held invalid a classification based on sex and marriage status for purposes of tax deductions; *LaFleur v. Cleveland Board of Education*, 465 F.2d 1184 (6 Cir. 1972), which held unconstittuional a state statute requiring a pregnant teacher to take unpaid leave for a prescribed period; *Wark v. Robbins*, 358 F.2d 1295, (1 Cir. 1972),

which held unconstitutional a state statute fixing dfferent sentences for escape by male and female felons.

CONCLUSION

This case presents substantial federal questions relating to the interpretation and application of the due process and equal protection clauses of the Fourteenth Amendment and the supremacy clause of Article VI of the United States Constitution. Probable jurisdiction should be noted, and the case should be given plenary consideration, with briefs on the merits and oral argument, for resolution of those questions.

Respectfully submitted,

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Of Counsel for Appellant

APPENDIX A

IN THE DISTRICT COURT OF SALT LAKE COUNTY, STATE OF UTAH

THELMA B. STANTON, *Plaintiff.*

v.

JAMES LAWRENCE STANTON, JR., *Defendant.*

ORDER

Civil No. 125233

The plaintiff's Motion for Judgment in her favor and against defendant in the sum of $3,000 plus costs and reasonable attorney fees, and for an order that defendant shall indemnify plaintiff against and hold her harmless from any liability on account of medical, surgical, hospital and pharmaceutical bills arising out of an accidental injury suffered by the parties' daughter, Sherri Lyn, came on regularly for hearing before the Honorable James S. Sawaya, one of the judges of the above entitled court on May 31, 1973, plaintiff appearing in person and by and through her attorney Bryce E. Roe of the firm of Roe and Fowler, and defendant appearing in person and by and through his attorney D. Gary Christian of the firm of Kipp and Christian, and the court having reviewed plaintiff's Motion and Affidavit and having reviewed defendant's Affidavit and having heard the statements and arguments of counsel, and being fully advised in the premises, the court heretofore having made and entered its Findings of Fact and Conclusions of Law, now, therefore, upon the motion of D. Gary Christian,

IT IS HEREBY ORDERED, ADJUDGED AND DECREE that plaintiff's Motion for Judgment against defendant for the sum of $3,000 and for costs and reasonable attorney's fees and for an order that defendant shall indemnify plaintiff against and hold her harmless from any liability on account of medical, surgical, hospital and pharmaceutical bills arising out of an accidental injury suffered by the parties' daughter, Sherri Lyn, be and the same is hereby denied.

DATED this 13th day of June, 1973.

BY THE COURT:
/s/JAMES S. SAWAYA
District Judge

APPENDIX B

IN THE SUPREME COURT OF THE STATE OF UTAH

Regular October Term, 1973

Thelma B. Stanton,
Plaintiff and Appellant,

v.

James Lawrence Stanton,
Defendant and Respondent.

January 4, 1974

REMITTITUR
No. 13362
Dist. No. 125233

This cause having been heretofore argued and submitted, and the Court being sufficiently advised in the premises, it is now ordered, adjudged and decreed that the judgment of the District Court herein be, upon the basis of the decree, and the record before us, the plaintiff is entitled to judgment for the $300 accrued support money for the son Rick, and to a continuance thereof during his minority unless otherwise properly determined and ordered by the District Court; except as to this last item, the judgment is affirmed. The parties to bear their own costs.

Regular October Term, 1973 January 30, 1974

(UPON PETITION FOR REHEARING)

Upon consideration of the petition for rehearing heretofore filed herein, and the arguments of counsel

thereupon had, it is ordered that the rehearing be, and the same is, denied.

Issued January 30, 1974.

Record:
One Volume

APPENDIX C

IN THE SUPREME COURT OF THE STATE OF UTAH

Jan. 4, 1974

THELMA B. STANTON,
Plaintiff and Appellant,
v.
JAMES LAWRENCE STANTON, JR.,
Defendant and Respondent.

No. 13362
Civil No. 125233

CROCKETT, Justice:

The main issue presented on this appeal is plaintiff's attack on the constitutionality of Section 15-2-1, U.C.A. 1953:

> The period of minority extends in males to the age of 21 years and in females to that of 18 years; but all minors obtain their majority by marriage.

She contends that making the age of majority lower for women than for men is discriminatory, and denies equal protection of the laws.[1]

After nine years of marriage and the birth of two children, Sherri, born February 12, 1953, and Rick, born January 29, 1955, the parties were divorced and the decree required the defendant to pay $100 per month alimony and $100 per month for the support of each

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1. Utah constitution, Art. I, Secs. 7 and 24; and Art IV, Sec. 1; and also U. S. Constitution, Amend. XIV.

child. It is not disputed that he made these payments until February 1971, at which time he ceased paying for Sherri because she had reached the age of 18. In supplemental proceedings the plaintiff sought judgment for support payments for Sherri accruing since that time. From an adverse ruling, she appeals. The trial court ruled in accordance with the assumption since time immemorial in our law that our statutes dealing with the support of "children" meant during the period of minority[2] and denied her petition. She appeals.

In considering plaintiff's charge that the statute just quoted is unconstitutional there are some general principles to be applied. Due to the important concept of separation of powers in our government, the courts should defer to the prerogative of the legislature to make the laws, and confine their own actions to interpreting and applying them. This, of course, does not negate their responsibility of determining an act to be invalid if there is a clear and irreconcilable conflict between it and the Constitution, which is the supreme and controlling law.[3] But the courts are in a peculiar and somewhat delicate position because it falls to their lot to decide whether such conflict exists, and there is always the danger of trespassing upon the legislative domain. For this reason, and in order to maintain and safeguard the balance of power so essential to our system of government, we think it is correct and desirable to adhere to a policy of caution and restraint in respect for the action of the legislature; and not strike

2. See Secs. 30-3-5, U.C.A.1953, support and custody of children in divorce cases; 30-2-10, cases of abandonment; 30-3-10, cases of separation; and 30-4-3, separate maintenance.
3. See Allen v. Rampton, 23 Utah 2d 336, 463 P.2d 7, and authorities therein cited.

down a statute unless it appears so clear that it is beyond a reasonable doubt that there is such irreconcilable conflict.[4]

It is also worthy of mentiion that this should be more true as to acts of a state legislature, which acts as representatives of a sovereign state, and thus has inherently all of the powers of sovereignty, except as otherwise specified or limited by the state constitution, as contrasted to the federal government which has only those powers expressly granted, with all others reserved to the people. See the language of Amendments IX and X, U. S. Constitution.

There is no doubt that the questioned statute treats men and women differently. But there is likewise no question but it may treat people differently based on classification, so long as there is a reasonable basis for the classification, which is related to the purposes of the act and it applies equally and uniformly to all persons within the class.[5] The plaintiff's argument is that, notwithstanding the foregoing, there is no sound reason for differentiation between the sexes as to the termination of the right of support. She asserts that whatever basis there may have been in former days for continuing the support of boys for the extra three years, because of the liberalization process in which women have become more involved in all affairs of the world outside the home, that basis no longer exists.

We are aware that both society in general and interfamily relationships have been undergoing change, as

4. Newcomb v. Ogden City Pub. School Teachers' Retirement Commission, 121 Utah 503, 243 P.2d 941 (1952).
5. State v. Mason, 94 Utah 501, 78 P.2d 920, 117 A.L.R. 330; Slater v. Salt Lake City, 115 Utah 476, 206 P.2d 153, 9 A.L.R. 2d 712.

they undoubtedly should. We do not desire to be understood as opposing change simply because it is different; and we wholly agree that an essential aspect of the vitality of the law is that it should change to meet changing conditions. But neither of those propositions provide the answer to the problem here.

It may be that our ancestors for generations before us have been misguided in their belief that there are some fundamental differences between the sexes. But it is remarkable how some of those old notions do continue to prevail as to numerous interesting differences. Included among them is the belief held by many that generally it is the man's primary responsibility to provide a home and its essentials for the family; and that however many exceptions and whatever necessary and proper variations therefrom may exist in differing circumstances, it is a salutary thing for him to get a good education and or training before he undertakes those responsibilities.

Perhaps more important than this, there is another widely accepted idea: that girls tend generaliy to mature physically, emotionally and mentally before boys, and that they generally tend to marry earlier.[6] We realize that as a court made up of men, there is a possibility of masculine bias, which we should endeavor to guard against in considering matters of this character. But we do not regard it as our judicial function to pass upon the soundness or unsoundness of the ideas just mentioned above. What we do note is our knowledge of their existence; and that they have played an essential

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6. See a good statement on this by Justice Dailey in Jacobsen v. Lenhart, 30 Ill.2d 225, 195 N.E.2d 638.

role in the history of the development of the law as declared in the statute under attack.

Should it be deemed the prerogative of the court to initiate a change in the age at which the parental duty of support terminates, it would be appropriate to reflect upon another aspect of the problem: that is, how would the shoe fit on the other foot? Assume that we would take judicial cognizance of the trend in the differing role of women, perhaps we should similarly notice the trend toward the earlier emancipation and fuller freedom of conduct of minors; and that this applies to both boys and girls. One indication of this is the recent reduction of the age for voting to 18.[7] From this it could be argued with equal logic that instead of extending the defendant's duty of supporting Sherri to 21, he should be relieved of the duty of supporting the son Rick (age 16) when he reaches 18. Thus in a contest between the plaintiff and the defendant as to the support of these children, there would be a net loss to the plaintiff.

On the basis of what has been said above we make these observations: that there are various factors which should be considered in formulating the policy of the law as to when the duty to support children should terminate; that the opposing contentions with respect to the merits of plaintiff's proposal are matters upon which reasonable minds might entertain different opinions; that due to those facts, combined with the long existence and application of this statute in harmony with our constitutional provisions, it is our judgment

7. See 20-2-11.1 U.C.A.1953; and Federal Voting Rights Act Amendments of 1970, Public Law 91-295.

that there is no basis upon which we would be justified in concluding that the statute is so beyond a reasonable doubt in conflict with constitutional provisions that it should be striken down as invalid.

We think this case and the proposal under consideration provide a very good example of why the courts should not initiate a change in the law as advocated by the plaintiff. If such a change is desirable, that is a matter which should commend itself to the attention of the legislature.[8] Then the proposal would be subject to public scrutiny and debate, and action be taken thereon by the representatives of the people, rather than to have a change result from a controversy between private individuals. There is the further advantage that if such a change is made legislatively, everyone could know the time, the manner and the extent of the change; and the legislature in the exercise of its wisdom and prerogative, could also provide how the new law would affect the thousands of divorce decrees already entered and under which such problems might arise, including the possible ex post facto, current, and prospective effects.

[6] There is an adjunctive minor issue in this case: defendant contends that the son Rick lived with him for about three months and that he is therefore entitled to a credit of $300 for Rick's support during that time. The general rule is that the decree fixes the obligations of the parties; and that they cannot modify it or change

8. That majority or minority is a status and that is the prerogative of the legislature to fix and change the age of majority, see in re Morrissey, 137 U.S. 157, 11 S.Ct. 57, 34 L.Ed. 644; and Springstun v. Springstun, 131 Wash. 109, 229 P. 14, 40 A.L.R. 595; 27 Am. Jur. 748, Sec. 5.

their obligations by their conduct.[9] Otherwise sometimes interfamily tensions and machinations could make a shambles of determining and enforcing the rights and duties of the parties.

In the absence of any modification of the decree, the support money accrued in accordance with its terms; and it was not the prerogative of the defendant to unilaterally decide that he would not pay the support money and offset it by favors conferred upon the children. However, in matters concerning the custody and support of children, because of their highly equitable nature, it is appropriate for the trial court to take into consideration the entire circumstances in making any order of enforcement of the decree, by contempt or otherwise, having in mind his equitable powers, to make any adjustment he may think fair and justified.

[9] Nevertheless, upon the basis of the decree, and the record before us, the plaintiff is entitled to judgment for the $300 accrued support money for the son Rick, and to a continuance thereof during his minority unless otherwise properly determined and ordered by the district court. Except as to this last item, the judgment is affirmed. The parties to bear their own costs.

CALLISTER, C. J., TUCKETT and HENRIOD, JJ., and JOSEPH E. NELSON, District Judge, concur.

ELLETT, J., having disqualified himself, does not participate herein.

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9. See Harris v. Harris, 14 Utah 2d 96, 377 P.2d 1007, Marks v. Marks, 98 Utah 400, 100 P.2d 207.

APPENDIX D

IN THE DISTRICT COURT OF SALT LAKE COUNTY, STATE OF UTAH

THELMA B. STANTON, *Appellant*,
v.
JAMES LAWRENCE STANTON, JR., *Appellee*.
Civil No. 125233

NOTICE OF APPEAL TO THE SUPREME COURT OF THE UNITED STATES

NOTICE IS HEREBY GIVEN that Thelma B. Wasescha, formerly known as Thelma B. Stanton, the appellant above named, hereby appeals to the Supreme Court of the United States from the final judgment of the Supreme Court of the State of Utah filed January 4, 1974, affirming an order of the District Court of Salt Lake County entered herein on June 13, 1973, insofar as it denied plaintiff judgment for accrued support money for the party's daughter, Sherri Lyn Stanton.

This appeal is taken pursuant to 28 U.S.C. §1257 (2).

DATED this 5th day of March, 1974.

/s/ Bryce E. Roe and
William G. Fowler
340 East Fourth South
Salt Lake City, Utah 84111
Attorneys for Appellant

Supreme Court, U. S.
FILED
JUN 8 1974
MICHAEL RODAK, JR., CLERK

IN THE

Supreme Court of the United States

October Term, 1973

No. 73-1461

THELMA B. STANTON,
Appellant,

v.

JAMES LAWRENCE STANTON, JR.
Appellee.

On Appeal from the Supreme Court of the State of Utah

MOTION TO DISMISS

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MOTION TO DISMISS

OPINION BELOW

The opinion of the Utah Supreme Court in this matter appears in 517 P.2d 1010 (1974) and in the as yet unpublished Volume 30 of the Utah Reports (2d). It is set forth in the Appendix of this Motion at pages 1a through 7a.

FACTS

This case arises from a Decree of Divorce entered November 29, 1960 in the District Court of Salt Lake County, State of Utah, which awarded to appellant the care and custody of the minor children, Sherri Lyn and Rick Arlund and which ordered appellee to pay appellant One Hundred Dollars ($100.00) per month per child as child support. On February 22, 1971, Sherri Lyn attained the age of eighteen whereupon appellee discontinued payments for her support.

On May 22, 1973 appellant filed a Motion for Judgment seeking recovery of the alleged delinquencies from February 22, 1971. The district court denied this Motion giving as its reason the following statement from the Amended Findings of Fact and Conclusions of law:

> 1. On February 12, 1971, Sherri Lyn Stanton, one of the children of the parties became 18 years of age, and under the provisions of 15-2-1 Utah Code Annotated 1953, thereby attained her majority. Defendant is not obligated to plaintiff for maintenance and support of Sherri Lyn Stanton since that date.
>
> . . .

Section 15-2-1 which formed the basis of the decision reads as follows:

> The period of minority extends in males to the age of 21 years and in females to that of 18 years; but all minors obtain their majority by marriage.

Appeal from this decision was taken to the Utah State Supreme Court on January 4, 1974, where the judgment of the lower court was affirmed. The decision was based

upon a general theory of judicial restraint. Noting that various reasons could be advanced for the adoption of a statute which distinguishes between men and women in the eighteen to twenty-one age group the court stated:

> But we do not regard it as our judicial function to pass upon the soundness of the ideas just mentioned above. What we do note is our knowledge of their existence; and that they have played an essential role in the history of the development of the law as declared in the statute under attack.

The court also advanced the closely related reason that full determination of the question of constitutionality of the statute would require a decision by the court as to what the uniform age of majority should be. As to this question the court stated:

> We think this case and the proposal under consideration provide a very good example of why the courts should not initiate a change in the law as advocated by the plaintiff. If such a change is desirable, that is a matter which should commend itself to the attention of the legislature.

Appellant filed Notice of Appeal from the decision to this court. The purpose of this Motion is to seek dismissal of that appeal.

POINT I

APPELLANT LACKS STANDING TO ASSERT THE UNCONSTITUTIONALITY OF SECTION 15-2-1, UTAH CODE ANNOTATED, 1953

The Decree of Divorce which severed the matrimonial bonds of appellant and appellee in 1960 provided that

. . .